

Pursuant to notice the Missouri Real Estate Commission (“Commission”) held a hearing on October 2, 2019, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining whether Respondents had violated the disciplinary terms of a prior Commission Settlement Agreement and if so, whether additional discipline of Respondents’ licenses was warranted. All of the members of the Commission were present throughout the meeting, except Charles Misko was not present. The Commission was represented by Assistant Attorney General Ross Keeling. On behalf of the Commission, counsel offered the testimony of Terry W. Moore, Executive Director, and offered three (3) exhibits which were admitted into the record. Respondent Edwards Joseph Ewertowski, having received proper notice and opportunity to appear, did appear in person with legal counsel, John Ruth. Respondent St Louis Property Investments, Inc., having received proper notice and opportunity to appear, appeared through legal counsel, John Ruth. After being present and considering all of the evidence presented during the hearing, the Commission issues these following Findings of Fact, Conclusions of Law, and Disciplinary Order.

I.

FINDINGS OF FACT

1. The Missouri Real Estate Commission is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo.,¹ for the purpose of carrying out and enforcing the provisions of §§ 339.010 to 339.205 and 339.710 to 339.855, RSMo., and the regulations promulgated thereunder, relating to real estate salespersons and brokers.

2. Edward Joseph Ewertowski holds a Broker Officer license from the Commission, license number 2011036603. Mr. Ewertowski's Broker Officer license was current at all times relevant to this proceeding. Respondent St Louis Property Investments Inc. holds a real estate corporation license, number 2011036599. St Louis Property Investments Inc., was current at all times relevant to this proceeding.

3. On May 3, 2017, the Commission and Respondents entered into a Settlement Agreement placing Mr. Ewertowski's Broker Officer license and St. Louis Property Investments, Inc.'s real estate corporation license on two years probation. At their own expense, Respondents were to ensure that quarterly audits of their registered escrow accounts, Account 1531 at Eagle Bank and Trust Company and Account 7254 at US Bank, were conducted and completed by a certified public accountant (CPA) approved by the Commission. The Settlement Agreement required Respondents to comply with all relevant provisions of Chapter 339 RSMo., as amended; all rules and regulations of the MREC; and all local, state, and federal laws.

4. The relevant terms of the disciplinary period as stated in the Settlement Agreement were:

- a. Paragraph "25 a": Licensees shall, at their own expense, ensure that quarterly audits of their registered escrow accounts, Account 1531 at Eagle Bank and Trust

¹ All statutory references are to the Revised Statutes of Missouri, as amended, unless otherwise indicated.

Company and Account 7254 at US Bank, are conducted and completed by a certified public accountant (CPA) approved by the Commission. Within 15 calendar days of the effective date of this Settlement Agreement, Licensees shall submit to the MREC in writing a list of at least three CPAs, including name, address, and relationship to Licensees. The Commission may approve one or more of the listed CPAs or may require Licensees, on grounds that are reasonable, to submit additional names for consideration and approval. Licensees shall, at their expense, retain an approved CPA to conduct and complete the quarterly audits for the disciplinary period. The first such quarterly audit shall begin with the quarter ending June 30, 2017 and continue through and conclude with the quarter ending March 30, 2019. Within seven calendar days of completion of each quarterly audit, Licensees shall provide the MREC with written confirmation of the audit's completion. Further, within 30 days of completion of each quarterly audit, the certified public accountant conducting and completing the audit will mail to the MREC by certified mail, return receipt requested, a signed statement from the CPA confirming that his/her firm completed a reconciliation of the account and matched the reconciled balance to the check register and the total of all reported owner and/or tenant balances. All documents necessary to prove the reconciliation should be submitted with the CPA's statement. If the CPA should find that the three-way reconciliation does not match, the CPA report should include the details and documentation necessary to show that all discrepancies were identified and corrected.

5. To date, Respondents have failed submit quarterly CPA reports regarding registered escrow accounts: Account 1531 at Eagle Bank and Trust Company and Account 7254 at US Bank, which provides cause to further discipline Respondents' licenses pursuant to Section 324.042, RSMo., and Paragraph "25 a" of the Settlement Agreement.

6. As a result of the foregoing, a Probation Violation Complaint was filed with the Missouri Real Estate Commission alleging that grounds existed for additional disciplinary action against Edward Joseph Ewertowski and St Louis Property Investments, Inc.'s Missouri real estate licenses, pursuant to § 324.042, RSMo.

7. The Commission set this matter for hearing and served notice of this disciplinary hearing upon Respondents in a proper and timely fashion.

8. On October 2, 2019, pursuant to notice and § 621.110, RSMo., this Commission held a hearing at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining whether the Respondents had violated any terms of the Settlement Agreement, and if so, whether any additional discipline would be imposed against Respondents' licenses. Respondent Edward Joseph Ewertowski, did appear in person with legal counsel, John Ruth. Respondent St Louis Property Investments, Inc., having received proper notice and opportunity to appear, appeared through legal counsel, John Ruth. Petitioner was represented by Ross Keeling, Assistant Attorney General, who presented evidence and testimony as stated on page 1 of this Order.

9. All the members of the Commission were present throughout the disciplinary hearing, except Charles Misko, Public Member.

II.

CONCLUSIONS OF LAW

10. Edward Joseph Ewertowski and St Louis Property Investments, Inc.'s failure to provide quarterly audits of their registered escrow accounts, Account 1531 at Eagle Bank and Trust Company and Account 7254 at US Bank, that were conducted and completed by a certified public accountant (CPA) approved by the Commission, in violation of, Paragraph "25 a" of the Settlement Agreement is a violation of the terms of the Settlement Agreement which provides

cause to further discipline Edward Joseph Ewertowski and St Louis Property Investments, Inc.'s licenses under § 324.042, RSMo.

11. Pursuant to § 324.042, RSMo., the Commission has authority to impose additional discipline against Edward Joseph Ewertowski and St Louis Property Investments, Inc., for violating any disciplinary terms previously imposed or agreed to pursuant to the Settlement Agreement with the licensees.

12. Section 324.042, RSMo., provides:

Any board, commission or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission or committee may impose as additional discipline, any discipline it would be authorized to impose in an initial disciplinary hearing.

13. Pursuant to Section 324.042, RSMo., the Commission has jurisdiction to hold additional hearings and impose discipline if it finds that a licensee has violated any disciplinary terms previously imposed by the Commission.

14. Section 339.100.3, RSMo., provides the Commission may discipline a real estate license after an initial disciplinary hearing by revoking, probating or suspending said license.

15. The Commission finds Respondents Edward Joseph Ewertowski and St Louis Property Investments, Inc.'s have violated the terms and conditions of the Settlement Agreement that became effective May 3, 2017 as a result of the conduct identified in the Findings of Fact set forth above.

16. The Commission has determined that this Order is necessary to ensure the protection of the public.

III.

ORDER

Therefore, having fully considered all the evidence before the Commission, it is the **ORDER** of this Commission that:

17. **No further discipline** be imposed against St Louis Property Investments Inc., license number 2011036599.

18. The Broker Officer license of Edward Joseph Ewertowski (license no. 2011036603) is hereby **placed on THREE (3) YEARS' PROBATION**. During Respondent's probation, Respondent shall be entitled to practice under his respective license provided that Respondent adheres to all of the terms stated herein. The period of probation shall constitute the "disciplinary period."

The terms and conditions of the disciplinary period are as follows:

A. Respondent is hereby ordered to **pay a civil penalty of \$2,500 by certified check** made payable to the "Missouri Real Estate Commission" and mail to the Missouri Real Estate Commission, P.O. Box 1339, Jefferson City MO 65102-1339. Said **certified check** must be postmarked or hand delivered within 60 days of the date of this Order. Funds received pursuant to this Order shall be handled in accordance with Section 7 of Article IX of the Missouri Constitution and § 339.205.8, RSMo.

B. During the period of probation, Respondent shall be prohibited from managing property for any third party through any entity.

C. Respondent shall close registered escrow accounts, Account 1531 at Eagle Bank and Trust Company and Account 7254 at US Bank, and provide proof to the Commission within 30 days of the date of this Order.

D. Respondent shall keep the MREC apprised at all times, in writing, of Respondent's current mailing addresses, e-mail address (if any), and telephone numbers at each place of residence and business. Respondent shall notify the MREC within ten (10) days of any change in this information.

E. Respondent shall timely renew his real estate license(s), timely pay all fees required for license renewal and shall comply with all requirements necessary to maintain his license(s).

F. Respondent shall be prohibited from obtaining any additional real estate license(s) from the Commission, changing license status, or transferring his license without the prior written approval of the Commission. Respondent shall request such permission in writing.

G. Respondent shall meet in person with the Commission or its representative any such time or place as required by the Commission or its designee upon notification from the Commission or its designee. Said meetings will be at the Commission's discretion and may occur periodically during the probation period.

H. Respondent shall immediately submit documents showing compliance with the requirements of this Order to the Commission when requested by the Commission or its designee.

I. During the probationary period, Respondent shall accept and comply with unannounced visits from the Commission's representative to monitor compliance with the terms and conditions of this Order.

J. Respondent shall comply with all relevant provisions of Chapter 339, RSMo, as amended; all rules and regulations duly promulgated under all local, state and federal laws. "State" as used herein includes the State of Missouri and all other states and territories of the United States. Any cause to discipline Respondent's license as a Broker Officer under

§ 339.100.2, RSMo, as amended, that accrues during the disciplinary period shall constitute a violation of this Order.

K. Upon the expiration and successful completion of the disciplinary period, Respondent's respective real estate Broker Officer license shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREC determines that Respondent has violated any term or condition of this Order, the MREC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Respondent's real estate Broker Officer license.

The Commission will maintain this Order as an open, public record of the Commission as provided in Chapters 339, 610 and 324, RSMo.

So Ordered this 7th day of OCTOBER 2019.


Terry W. Moore, Executive Director
Missouri Real Estate Commission

BEFORE THE
MISSOURI REAL ESTATE COMMISSION

MISSOURI REAL ESTATE
COMMISSION

3605 Missouri Boulevard
P.O. Box 1339
Jefferson City, MO 65102

Petitioner,

No.

v.

Edward Joseph Ewertowski
St. Louis Property Investments Inc.
3277 Ivanhoe Ave.
St. Louis, MO 63139

Respondent.

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MREC

PROBATION VIOLATION COMPLAINT

Petitioner, Missouri Real Estate Commission ("MREC"), by and through its attorney, the Attorney General of Missouri, states its cause of action against ("Ewertowski"):

1. The MREC was established pursuant to § 339.120, RSMo, for the purpose of executing and enforcing the provisions of §§ 339.010 to 339.180 and §§ 339.710 to 339.860, RSMo, (as amended), relating to real estate salespersons and brokers.

2. Ewertowski holds a broker officer license from the Commission, license, no. 2011036603 and previously held a broker associate license no. 1999074542, which is now expired.

3. By Settlement Agreement, effective May 3, 2017, Ewertowski's real estate licenses were placed on probation for two years. A true and accurate copy of the Settlement Agreement is attached to this Probation Violation Complaint as Exhibit A and is incorporated as if fully stated herein.

4. The MREC has jurisdiction over this matter pursuant to §324.042, RSMo. The MREC has further jurisdiction pursuant to the Joint Agreed Disciplinary Order ("Order") paragraph 27 of the Settlement Agreement, which states:

This Agreement does not bind the Commission or restrict the remedies available to it concerning any future violations by Licensee of Chapter 339, RSMo, as amended or the regulations promulgated thereunder, or the terms of this Agreement.

5. The probationary period of Ewertowski's real estate licenses are due to expire on May 3, 2019.

6. The relevant terms of the probationary period are stated as follows in the Settlement Agreement, in pertinent part:

25. Terms and conditions of the disciplinary period.
Terms and conditions of the disciplinary period are as follows:

Specific Terms

a. Licensees shall, at their own expense, ensure that quarterly audits of their registered escrow accounts, Account 1531 at Eagle Bank and Trust Company and Account 7254 at US Bank, are conducted and completed by a certified Public Accountant (CPA) approved by the Commission. Within 15 calendar days of the effective date of this Settlement Agreement, licensees shall submit to the MREC in writing at least three

CPA's including name, address, and relationship to Licensees. The Commission may approve one or more of the listed CPAs or may require licensees, on grounds that are reasonable, to submit additional names for consideration and approval. Licensees shall, at their expense, retain an approved CPA to conduct and complete the quarterly audits for the disciplinary period. The first Such Quarterly period audit shall begin with the quarter ending June 30, 2017 and continue through and conclude with the quarter ending March 30, 2019. Within seven calendar days of completion of each quarterly audit, Licensees shall provide the MREC with written confirmation of the audit's completion. Further, within 30 days of completion of each quarterly audit, the certified public accountant conducting and completing the audit will mail to the MREC by certified mail, return receipt requested, a signed statement from the CPA confirming that his/her firm completed a reconciliation of the account that matched the reconciled balance to the check register and the total of all reported owner and/or tenant balances. All documents necessary to prove the reconciliation should be submitted with the CPA's statement. If the CPA should find that the three-way reconciliation does not match, the CPA report should include the details and documentation necessary to show that all discrepancies were identified and corrected.

General Terms

d. Licensee shall immediately submit documents showing compliance with the requirements of this Order to the MREC when requested by the MREC or its designee.

30. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

7. The MREC received a list of three CPAs from Ewertowski on May 23, 2017 to consider for approval. Two of the three CPAs were approved without reservation, and the third was approved if the company had experience with three way reconciliations.

8. In a letter dated July 31, 2017, Ewertowski asked for an extension of 90 days to hire a CPA and provide the required reports. As an alternative to hiring the CPA, Ewertowski wanted to reorganize and eliminate the property management portion of his company. He identified what he described as a "large professional management company" that was interested in taking over his property management accounts, but claimed that transfer would take some time.

9. On August 9, 2017 the MREC approved Ewertowski's request for a 90-day extension of the deadline date for submission of the first CPA report because Ewertowski could not find a CPA that would do the work timely. He was notified in a letter dated August 29, 2017, and informed that he had until October 31, 2017 to submit both the June 30, 2017 and September 30, 2017 CPA quarterly reports.

10. Ewertowski has not provided any of the audit materials required under the Order.

11. By failing to provide hire a CPA at his expense, to conduct and complete the quarterly audits for the disciplinary period, and by failing to submit documents showing compliance with the requirements of the Order, Ewertowski violated the terms of his probation, providing cause to discipline his probated license.

WHEREFORE, Petitioner requests the MREC to hold a hearing to determine that a violation occurred and may impose disciplinary action under § 324.042, RSMo, for the violations noted above, and for other such relief as the Commission deems appropriate.

Respectfully submitted,

ERIC S. SCHMITT
Attorney General

/s/ Ross Keeling

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Attorneys for Petitioner

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MREC

SETTLEMENT AGREEMENT BETWEEN
MISSOURI REAL ESTATE COMMISSION AND ST. LOUIS PROPERTY INVESTMENTS, INC.
AND EDWARD JOSEPH EWERTOWSKI

Come now St. Louis Property Investments, Inc. d/b/a E Group Realty ("E Group") and Edward Joseph Ewertowski ("Ewertowski") (collectively "Licensees") and the Missouri Real Estate Commission ("Commission") and enter into this settlement agreement for the purpose of resolving the question of whether E Group's license as a real estate corporation and Ewertowski's license as a real estate broker officer will be subject to discipline.

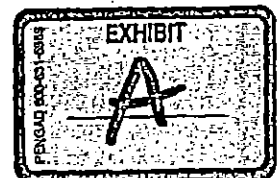
Pursuant to the terms of § 536.060, RSMo,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensees' licenses, and, additionally, the right to a disciplinary hearing before the Commission under § 621.110, RSMo.

Licensees E Group and Ewertowski acknowledge that they understand the various rights and privileges afforded them by law, including the right to a hearing of the charges against them; the right to appear and be represented by legal counsel; the right to have all charges against them proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against them; the right to present evidence on their own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against them and, subsequently, the right to a disciplinary hearing before the Commission at which time they may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against their licenses. Being aware of these rights provided them by operation of law, E Group and Ewertowski knowingly and voluntarily waive each and every one of these rights and freely enter into this settlement agreement and agree to abide by the terms of this document, as they pertain to them.

E Group and Ewertowski acknowledge that they have received a copy of the documents relied upon by the Commission in determining there was cause to discipline their licenses, along with citations to law and/or regulations the Commission believes were violated.

For the purpose of settling this dispute, E Group and Ewertowski stipulate that the factual allegations contained in this settlement agreement are true and stipulates with the Commission that their licenses,

¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.



numbered 2011036599 (E Group) and 2011036603 (Ewertowski) are subject to disciplinary action by the Commission in accordance with the provisions of Chapter 621 and §§ 339.010-339.205 and 339.710-339.855, RSMo.

Joint Stipulation of Fact and Conclusions of Law

1. The Commission is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo, for the purpose of licensing all persons engaged in the practice as a real estate broker or salesperson in this state. The Commission has control and supervision of the licensed occupations and enforcement of the terms and provisions of Sections 339.010-339.205 and 339.710-339.855, RSMo.

2. Licensee, E Group, holds a real estate corporation license from the Commission, license number 2011036599. The Commission issued E Group's license on October 31, 2011 and it expires June 30, 2018. Licensee's license was current and active at all relevant times herein. Licensee Edward Joseph Ewertowski is the designated broker for E Group.

3. Licensee, Edward Joseph Ewertowski, holds a broker officer license from the Commission, license number 2011036603. The Commission issued Ewertowski's broker officer license on October 31, 2011. Licensee's license expires June 30, 2018. Licensee Ewertowski's license was current and active at all relevant times herein.

4. On March 24, 25, 26, 30 and April 16, 2015, the Commission conducted an audit of Licensee. The Commission's audit revealed:

- a. In violation of §§ 339.100.2(1) and 339.105.1, RSMo, and regulations 20 CSR 2250-8.120(4) and 20 CSR 2250-8.220(3), on numerous instances, rent was not deposited and maintained in an escrow account.
- b. In violation of § 339.105.1, RSMo, there were numerous instances of commingling of funds in that Ewertowski deposited rents and security deposits into the brokerage's operating account.
- c. In violation of § 339.105.1, RSMo, there was an identified shortage of \$147,205 in the security deposit escrow account due to security deposits not held in an escrow account.
- d. In violation of § 339.105.1, RSMo, there was an identified shortage of \$487.01 in the property management escrow account due to negative owner balances.

- e. In violation of § 339.105.1, RSMo, and 20 CSR 2250-8.220(2), on numerous instances, security deposits were not held in an escrow account but were deposited and disbursed out of the brokerage's operating account.
- f. In violation of § 339.730.1(1), RSMo, Ewertowski failed to perform the terms of the written agreement with the landlord in that on five instances, Ewertowski used a management agreement as a listing agreement to lease property but did not specifically identify those management services to be excluded and on two instances, Ewertowski held the security deposits when the management agreement stated that the property owner was to hold them.
- g. In violation of §§ 339.750.1 and 339.780.4, RSMo, the designated broker acted as a dual agent without written authorization from the tenant.
- h. In violation of § 339.760.1, RSMo, the designated broker, Ewertowski, failed to adopt a written policy which identifies and describes the relationships in which the designated broker and affiliated licensees may engage with any seller, landlord, buyer or tenant.
- i. In violation of § 339.780.2, RSMo, Ewertowski acted as an agent of the seller without obtaining a written agency agreement.
- j. In violation of § 339.780.3, RSMo, on two occasions, Ewertowski acted as an agent of the tenant without obtaining a written agency agreement.
- k. In violation of 20 CSR 2250-4.030(1) and 20 CSR 2250-8.010(2), the brokerage's business sign did not bear the name under which the brokerage is licensed and the fictitious name was not registered with the Missouri Secretary of State.
- l. In violation of 20 CSR 2250-8.090(9)(C), on two instances, the management agreement did not specify whether security deposits and prepaid rents would be held by the broker or the owner.
- m. In violation of 20 CSR 2250-8.090(9)(I), on two instances, the management agreement did not include a statement which permits or prohibits the designated broker from acting as a transaction broker.
- n. In violation of 20 CSR 2250-8.096(1)(A)(5), the written brokerage relationship disclosure was not dated by the landlord.

- a. In violation of 20 CSR 2250-8.096(1)(A)(6), the written brokerage relationship disclosure was not signed by the disclosing licensee.
 - p. In violation of 20 CSR 2250-8.100(1), all terms and conditions were not specified in the offer to purchase.
 - q. In violation of 20 CSR 2250-8.150(2), the broker, Ewertowski, failed to verify the accuracy of the closing statement in that it was not signed by the buyer.
 - r. In violation of 20 CSR 2250-8.220(1), on 34 instances, Ewertowski disbursed funds from the property management escrow owner's account when the balance was not sufficient to cover the disbursement.
 - s. In violation of 20 CSR 2250-8.220(2), on numerous instances, Ewertowski, failed to maintain security deposits intact.
5. On August 9, 2016, the Commission conducted a limited re-audit of Licensees' property management activity. The Commission's audit revealed the following violations:
 - a. In violation of §§ 339.100.2(1) and 339.105.1, RSMo, and regulations 20 CSR 2250-8.120(4) and 20 CSR 2250-8.220(3), on numerous instances, rent was not deposited and maintained in an escrow account.
 - b. In violation of § 339.100.2(19), RSMo, there was improper business dealings in that a check to "cash" was written on the, Eagle Bank & Trust Company account ending 1531 ("Account 1531").
 - c. In violation of § 339.105.1 and 20 CSR 2250-8.220(2), on multiple instances, security deposits were not held in an escrow account. See also, paragraph 6.c. through 6.f. below.
 - d. In violation of § 339.105.1, RSMo, there was a net shortage of \$101,413 in the property management escrow account, Account 1531. The shortage was partially identified as \$5,050 identified as security deposits to be broker held on properties where the management agreement specifies the owner to hold. This actually results in an effective unidentified shortage of \$106,463.

- e. In violation of § 339.105.1, RSMo, there was an identified overage of \$12,109.50 in the property management escrow account, US Bank account ending 7254 ("Account 7254") which was identified as a deposit of commissions from a sale transaction on April 21, 2016.
- f. In violation of § 339.105.1, RSMo, there was an identified shortage in the property management escrow account, Account 7254. The shortages included: \$250 due to an unexplained transfer to a broker personal account on January 21, 2016; \$36 due to an overdraft fee on May 24, 2016; and \$216 due to overdraft fees from March 2016.
- g. In violation of § 339.105.1, RSMo, there was a temporary overage of the property management escrow account, Account 7254, in the amount of \$3,000 from October 16-27, 2015 due to a transfer from the broker's operating account in error.
- h. In violation of § 339.105.1, RSMo, on numerous instances there was commingling in the property management escrow account, Account 1531 including: security deposits were deposited in the broker's operating account; a check from the security deposit account was written made payable to cash; there was a transfer of personal funds into and out of Account 1531; there was depositing of rents into the broker's operating account; there were transfers into and out of the property management escrow account from the broker's operating account and there was the deposit of the broker's commission check into the property management account.
- i. In violation of § 339.105.1, RSMo, on two instances there was an overdraft in the property management escrow account, Account 7254.
- j. In violation of § 339.105.2, RSMo, and 20 CSR 2250-8.220(7), Ewertowski registered the property management escrow account with the Commission incorrectly in that the account was registered as Eagle Bank & Trust, however, the charter name is Eagle Bank and Trust Company of Missouri.
- k. In violation of § 339.105.3, RSMo, on numerous instances, Ewertowski did not maintain records necessary to determine the adequacy of the property management account, Account 7254:
 - i. There was commingling of funds on numerous occasions due to transfers to and from the broker's operating account.

- ii. Rents were not deposited and maintained in the property management escrow account.
 - iii. On two instances, there was an overdraft in the property management escrow account.
 - iv. On numerous instances there were deposits that did not contain the related transaction.
 - v. On numerous instances, the disbursements did not contain the related transaction.
 - vi. Items on the check register did not match the actual amount clearing the bank statement.
 - vii. A check on the register marked as cleared had not cleared the bank as of June 30, 2016.
 - viii. There were adjustments to the register to force balance the account that were not in the bank.
- l. In violation of § 339.730.1(1), RSMo, on numerous instances, the broker failed to perform the terms of the written agreement with the landlord in that on two properties where the management agreement specified the owner was to hold the security deposit, the broker held the security deposit and rents and owner funds were not deposited into an escrow account pursuant to the management agreement on numerous instances.
 - m. In violation of 20 CSR 2250-8.090(9)(C), on two instances, the management agreement did not specify whether security deposits and prepaid rents would be held by the broker or the owner.
 - n. In violation of 20 CSR 2250-8.096(1)(A)(6), on two instances, the written brokerage relationship disclosure was not dated by the disclosing licensee on or before the lease date.
 - o. In violation of 20 CSR 2250-8.160(2), on 18 instances, Licensees failed to retain records for Account 7254 including one deposit ticket from June 9, 2016 and 17 voided checks.
 - p. In violation of 20 CSR 2250-8.220(2), on 10 instances, security deposits were not maintained in tact from October 2015 to July 2016.
 - q. In violation of 20 CSR 2250-8.220(8), on multiple instances, the related transaction was not indicated on each deposit to the security deposit account for both Accounts 1531 and 7254.
 - r. In violation of 20 CSR 2250-8.220(8), on multiple instances, the related transaction was not indicated on each check written, the corresponding check stub or other records of disbursement on the property management escrow accounts, Accounts 1531 and 7254.

6. The Commission's audits also revealed:
- a. The first audit revealed that Licensees registered an escrow account, Account 7254, with the Commission but did not use it for the deposit of rents and payment of property expenses. All rents and property expenses were deposited and disbursed out of the brokerage's operating account, US Bank account ending 0706 ("Account 0706").
 - b. The reaudit revealed that during the prior audit, one management agreement Commission examiners examined contained the violation of not containing a statement concerning the transaction brokerage. This management agreement was not corrected prior to the reaudit.
 - c. The reaudit also revealed that regarding Account 1531, according to Ewertowski, October 2015 was the first month the account was used for property management activity. Prior to that it was his personal account. There was a balance forward on the October 31, 2015 statement of \$804.50 which Ewertowski stated were his personal funds. There was a deposit into that account on October 15, 2015 of \$9,920 which Ewertowski stated were his personal funds to cover two security deposit refunds he needed to make. There were two disbursements to "refund security deposits" totalling \$2,300 on October 20, 2015. There was also a check issued to the brokerage for \$8,000 on October 27, 2015 and a check issued to cash for \$400 on February 1, 2016. According to the broker, Ewertowski, these debits were broker personal funds done to bring the account to a balance of \$24.50 upon which the brokerage would then start to use the account only for security deposits. During the Commission's examination of the escrow account, it was noted that June 2016 was the first date that security deposits were deposited into escrow account 1531. Ewertowski stated that this was the date in which he started depositing security deposits exclusively into the property management security deposit account and prior to that he was still using his business operating account.
 - d. The reaudit also revealed that regarding Account 7254, during the examination of the accounts, rents were not deposited in the account for a portion of the audit period. During August and September 2015, no deposits or disbursements were made to or from the account. In October 2015, there was one transfer deposit from the broker's operating account and one withdrawal to the broker's operating account. November 2015 had eight rent deposits and 57 checks paid for

property expenses. December 2015 saw no deposits and one check cleared for property expenses and January 2016 saw one withdrawal to a broker personal account. February 2016 had one deposit from a broker personal account and two disbursements to two different broker personal accounts. March through June of 2016 had multiple transfers into and out of Account 7254 from the broker's operating account as well as deposits and disbursements for property income and expenses. July 2016 had all property related deposits and disbursements. The Commission's examiner noted that the broker did a bank reconciliation as of July 31, 2016 and tied it to owner liabilities. As of July 31, 2016, the bank balance was \$8,194.14 and the broker had an outstanding check list which stated the total of the outstanding items was \$7,258.14, leaving a balance, according to the broker's records, of \$936.

- e. The reaudit further revealed that the broker liability records indicated a liability of \$926 for property at 6728 Fyler, leaving \$10 which the broker indicated was broker funds.
- f. Lastly, the reaudit revealed that there were several instances of amounts deposited or withdrawn in which there was no explanation. According to Ewertowski, he would transfer funds in and out of the account and those unverified transfers were used to bring the register balance to zero, essentially, using the transfers to force balance the account. Ewertowski stated he intended to start using the escrow account for rents and expenses after the initial audit response letter. In November 2015, he stated he started the process but there were issues with accounting so he postponed using the escrow account until March 2016. For the period March through June 2016, he stated he used a combination of his operating and escrow accounts and that is why there were transfers to and from the operating account. He stated in July 2016, he decided to do all deposits and disbursements through the escrow account and will continue to do so going forward.

7. Section 339.040.1, RSMo, states, in relevant part:

1. Licenses shall be granted only to persons who present, and corporations, associations, limited liability companies, and professional corporations whose officers, managers, associates, general partners, or members who actively participate in such entity's brokerage, broker-salesperson, or salesperson business present, satisfactory proof to the commission that they:

- (1) Are persons of good moral character; and

(2) Bear a good reputation for honesty, integrity, and fair dealing; and

(3) Are competent to transact the business of a broker or broker salesperson in such a manner as to safeguard the interest of the public.

8. Section 339.105, RSMo, states, in relevant part:

1. Each broker who holds funds belonging to another shall maintain such funds in a separate bank account in a financial institution which shall be designated an escrow or trust account. This requirement includes funds in which he or she may have some future interest or claim. Such funds shall be deposited promptly unless all parties having an interest in the funds have agreed otherwise in writing. No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account from his or her personal funds, which sum shall be specifically identified and deposited to cover service charges related to the account.

2. Each broker shall notify the commission of his or her intent not to maintain an escrow account, or the name of the financial institution in which each escrow or trust account is maintained, the name and number of each such account, and shall file written authorization directed to each financial institution to allow the commission or its authorized representative to examine each such account; such notification and authorization shall be submitted on forms provided therefore by the commission. A broker shall notify the commission within ten business days of any change of his or her intent to maintain an escrow account, the financial institution, account numbers, or change in account status.

3. In conjunction with each escrow or trust account a broker shall maintain books, records, contracts and other necessary documents so that the adequacy of said account may be determined at any time. The account and other records shall be provided to the commission and its duly authorized agents for inspection at all times during regular business hours at the broker's usual place of business.

9. Section 339.730.1(1), RSMo, states, in relevant part:

1. A licensee representing a seller or landlord as a seller's agent or a landlord's agent shall be a limited agent with the following duties and obligations:

(1) To perform the terms of the written agreement made with the client;.

10. Section 339.750.1, RSMo, states, in relevant part:

A licensee may act as a dual agent only with the consent of all parties to the transaction. Consent shall be presumed by a written agreement pursuant to section 339.780.

11. Section 339.760, RSMo, states, in relevant part:

Every designated broker who has affiliated licensees shall adopt a written policy which identifies and describes the relationships in which the designated broker and affiliated licensees may engage with any seller, landlord, buyer, or tenant as part of any real estate brokerage activities.

12. Section 339.780, RSMo, states, in relevant part:

2. Before engaging in any of the activities enumerated in section 339.010, a designated broker intending to establish a limited agency relationship with a seller or landlord shall enter into a written agency agreement with the party to be represented. The agreement shall include a licensee's duties and responsibilities specified in section 339.730 and the terms of compensation and shall specify whether an offer of subagency may be made to any other designated broker.

3. Before or while engaging in any acts enumerated in section 339.010, except ministerial acts defined in section 339.710, a designated broker acting as a single agent for a buyer or tenant shall enter into a written agency agreement with the buyer or tenant. The agreement shall include a licensee's duties and responsibilities specified in section 339.740 and the terms of compensation.

4. Before engaging in any of the activities enumerated in section 339.010, a designated broker intending to act as a dual agent shall enter into a written agreement with the seller and buyer or landlord and tenant permitting the designated broker to serve as a dual agent. The agreement shall include a licensee's duties and responsibilities specified in section 339.750 and the terms of compensation.

13. Regulation 20 CSR 2250-4.030(1) states, in relevant part:

Any broker doing business under any name other than the broker's legal name or entity doing business under any name other than the name registered with the secretary of state, shall first comply with the provisions of sections 417.200 - 417.230, RSMo on the registration of fictitious names and shall furnish the commission a copy of the registration within ten (10) days of receipt of the official registration from the secretary of state.

14. Regulation 20 CSR 2250-8.010(2) states, in relevant part:

A broker's business sign of sufficient size to identify it and bearing the name under which the broker or the broker's firm is licensed, or the regular business name, shall be displayed outside of the broker's regular place of business.

15. Regulation 20 CSR 2250-8.090 states, in relevant part:

(9) Every written property management agreement or other written authorization between a broker and the owners of the real estate shall:

(C) Specify whether security deposits and prepaid rents will be held by the broker or the owner;

(I) Contain a statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a transaction broker and if permitted, the duties and responsibilities of a transaction broker[.]

16. Regulation 20 CSR 2250-8.096 states, in relevant part:

(1) Licensees acting with or without a written agreement for brokerage services pursuant to sections 339.710 to 339.860, RSMo, are required to have such relationships confirmed in writing by each party to the real estate transaction on or before such party's first signature to the real estate contract. Nothing contained herein prohibits the written confirmation of brokerage relationships from being included or incorporated into the real estate contract, provided that any addendum or incorporated document containing the written confirmation must include a separate signature section for acknowledging the written confirmation that shall be signed and dated by each party to the real estate transaction.

(A) Written confirmation must -

5. Be signed and dated by the seller/landlord and buyer/tenant. If the landlord has entered into a written property management agreement pursuant to 20 CSR 2250-8.200 - 20 CSR 2250-8.210, the landlord shall not be required to sign the written confirmation;

6. Be signed and dated by the disclosing licensees on or before the contract date. If a landlord's agent or transaction broker is conducting property management pursuant to 20 CSR 2250-8.200 - 20 CSR 2250-8.210, the unlicensed office personnel may, in the performance of the duties enumerated in 339.010.5(5)(a)-(e), sign the written confirmation on behalf of the landlord's agent or transaction broker.

17. Regulation 20 CSR 2250-8.120 states, in relevant part:

(2) A licensee shall immediately deliver to the broker with whom affiliated all money received in connection with a real estate transaction in which the licensee is engaged.

(4) Each broker shall deposit into the escrow or trust account all funds coming into the broker's possession as set out in section 339.100.2(1), RSMo, including funds in which the broker may have some future interest or claim and including, but not limited to, earnest money deposits, prepaid rents, security deposits, loan proceeds and funds paid by or for the parties upon closing of the transaction. No broker shall commingle personal funds or other funds in the broker's escrow account except to the extent provided by section 339.105.1, RSMo. Commissions payable must be removed from the escrow account at the time the transaction is completed. After the transaction is completed, interest payable shall be disbursed to the appropriate party(ies) from the escrow account no later than ten (10) banking days following the receipt of the next statement of the escrow account. When the licensee receives all interest earned, interest payable to a licensee must be removed from the escrow account within ten (10) banking days following the receipt of the next statement of the escrow account.

18. Regulation 20 CSR 2250-8.160(2) states, in relevant part:

A broker may arrange for a closing to be administered by a title company, an escrow company, a lending institution or an attorney, in which case the broker shall not be required to sign the closing statement; however, it shall remain each broker's responsibility to require closing statements to be prepared, to review the closing statements to verify their accuracy and to deliver the closing statements to the buyer and the seller or cause them to be delivered. The detailed closing statement shall contain all material financial aspects of the transaction, including the true sale price, the earnest money received, any mortgages or deeds of trust of record, all monies received by the broker, closing agent or company in the transaction, the amount, and payee(s) of all disbursements made by the broker, closing agency or company and the signatures of the buyer and seller.

19. Regulation 20 CSR 2250-8.160(2) states, in relevant part:

Every broker shall retain for a period of at least three (3) years true copies of all property management agreements, correspondence or other written authorization relating to each real estate transaction relating to leases, rentals or management activities the broker has handled. The broker must also retain all business books, accounts and records unless these records are released to the owner(s) or transferred to another broker by written detailed receipt or transmittal letter agreed to in writing by all parties to the transaction.

20. Regulation 20 CSR 2250-8.220 states, in relevant part:

(1) A broker shall establish and maintain a separate escrow account(s), to be designated as a property management escrow account(s), for the deposit of current rents and money received from the owner(s) or on the

owner's(s') behalf for payment of expenses related to property management. Before making disbursements from a property management escrow account, a broker shall ensure that the account balance for that owner's(s') property(ies) is sufficient to cover the disbursements.

(2) All security deposits held by a broker shall be maintained, intact, in an escrow account other than the property management account(s), pursuant to section 339.105, RSMo, unless the owner(s) have agreed otherwise in writing.

(3) All money received by a broker in connection with any property management must be deposited within ten (10) banking days to the escrow account or trust account maintained by the broker.

(7) In addition to the notification required by section 339.105.2, RSMo, each broker, upon the request of the commission or its agent, shall consent to the examination and audit of the broker's property management escrow account(s) by the commission or its agent. As part of the consent, each broker shall execute a form presented to him/her by the commission or its agent entitled Consent to Examine and Audit Escrow or Trust Account.

(8) Each check written on an escrow account, or each corresponding check stub, or other record of disbursement of funds from the account and each deposit ticket shall indicate the related transaction. Each check written on an escrow account for licensee fees or commission shall be made payable to the licensee who is owed the fee or commission or to the firm's general operating account.

21. Licensees' conduct, as described in paragraphs 3 through 6 above, constitutes cause to discipline Licensees' licenses.

22. Cause exists for the Commission to take disciplinary action against Licensees' licenses under § 339.100.2(3), (15), (16) and (19), RSMo, which states in pertinent part:

2. The Commission may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any state-certified real estate appraiser, state-licensed real estate appraiser, or any person who has failed to renew or has surrendered his or her certificate or license for any one or any combination of the following causes:

(1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;

(3) Failing within a reasonable time to account for or to remit any moneys, valuable documents or other property coming into his or her possession which belongs to others;

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860*, or any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860*;

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

Joint Agreed Disciplinary Order

23. Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Commission in this matter under the authority of §§ 536.050, 621.045.4 and 621.110, RSMo.

24. The terms of discipline shall include Licensees' licenses shall be placed on probation for a period of two (2) years. Licensees' licenses are hereby placed on two (2) years' probation. During the period of probation on their licenses, Licensees shall be entitled to practice as a real estate corporation and real estate broker officer provided they adhere to all the terms stated herein. The period of probation shall constitute the "disciplinary period."

25. Terms and conditions of the disciplinary period. Terms and conditions of the disciplinary period are as follows:

Specific Terms

- a. Licensees shall, at their own expense, ensure that quarterly audits of their registered escrow accounts, Account 1531 at Eagle Bank and Trust Company and Account 7254 at US Bank, are conducted and completed by a certified public accountant (CPA) approved by the Commission. Within 15 calendar days of the effective date of this Settlement Agreement, Licensees shall submit to the MREC

in writing a list of at least three CPAs, including name, address, and relationship to Licensees. The Commission may approve one or more of the listed CPAs or may require Licensees, on grounds that are reasonable, to submit additional names for consideration and approval. Licensees shall, at their expense, retain an approved CPA to conduct and complete the quarterly audits for the disciplinary period. The first such quarterly audit shall begin with the quarter ending June 30, 2017 and continue through and conclude with the quarter ending March 30, 2019. Within seven calendar days of completion of each quarterly audit, Licensees shall provide the MREC with written confirmation of the audit's completion. Further, within 30 days of completion of each quarterly audit, the certified public accountant conducting and completing the audit will mail to the MREC by certified mail, return receipt requested, a signed statement from the CPA confirming that his/her firm completed a reconciliation of the account and matched the reconciled balance to the check register and the total of all reported owner and/or tenant balances. All documents necessary to prove the reconciliation should be submitted with the CPA's statement. If the CPA should find that the three-way reconciliation does not match, the CPA report should include the details and documentation necessary to show that all discrepancies were identified and corrected.

General Terms

- a. Licensees shall keep the MREC apprised at all times in writing of their current addresses and telephone numbers at each place of residence and business. Licensees shall notify the MREC in writing within ten days of any change in this information.
- b. Licensees shall timely renew Licensees' licenses, timely pay all fees required for license renewal, and comply with all other requirements necessary to maintain their licenses in a current and active state. During the disciplinary period, Licensees shall not place their licenses on inactive status as would otherwise be allowed under 20 CSR 2250-4.050. Alternatively, without violating the terms and conditions of this Settlement Agreement, Licensees may surrender their real estate licenses by submitting a letter to the MREC along with the original license and any duplicate copies issued to Licensee. If Licensees apply for a real estate license after surrender, Licensees shall be required to requalify as if original applicants. Licensees would have to apply as an original applicant for a

salesperson license. The MREC will not be precluded from basing its decision, wholly or partially, on the findings of fact, conclusions of law, and discipline set forth in this Settlement Agreement.

c. Licensees shall meet in person with the MREC or its representative at any such time and place as required by the MREC or its designee upon notification from the MREC or its designee. Said meetings will be at the MREC's discretion and may occur periodically during the probation period.

d. Licensees shall immediately submit documents showing compliance with the requirements of this Order to the MREC when requested by the MREC or its designee.

e. During the probationary period, Licensees shall accept and comply with unannounced visits from the MREC's representatives to monitor compliance with the terms and conditions of this Order.

f. Licensees shall comply with all relevant provisions of Chapter 339, RSMo, as amended; all rules and regulations of the MREC; and all local, state, and federal laws. "State" as used herein refers to the State of Missouri and all other states and territories of the United States.

g. Licensees shall report to the MREC each occurrence of Licensees' being finally adjudicated and found guilty, or entering a plea of guilty or nolo contendere, in a state or federal criminal prosecution, to felony or misdemeanor offenses, within ten business days of each such occurrence.

26. This Agreement does not bind the Commission or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Agreement that are either now known to the Commission or may be discovered.

27. This Agreement does not bind the Commission or restrict the remedies available to it concerning any future violations by Licensee of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms of this Agreement.

28. All parties agree to pay all their own fees and expenses incurred as a result of this case, its settlement or any litigation.

29. The parties to this Agreement understand that the Missouri Real Estate Commission will maintain this Agreement as an open record of the Commission as provided in Chapters 339, 610 and 324, RSMo.

30. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions

may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.


31. Licensees, together with Licensees' heirs and assigns, and Licensees' attorneys, do hereby waive, release, acquit and forever discharge the Commission, its respective members and any of its employees, agents, or attorneys, including any former Commission members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.097, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

32. If no contested case has been filed against Licensees, Licensees have the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the licenses of Licensees. If Licensees desire the Administrative Hearing Commission to review this Agreement, Licensees may submit this request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

33. If Licensees have requested review, Licensees and Commission jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensees' licenses and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensees' licenses. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensees' licenses, the agreed upon discipline set forth herein shall go into effect. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the Commission may proceed to seek discipline against Licensees as allowed by law. If the Licensees do not submit the agreement to the

Administrative Hearing Commission for determination, the agreement shall become effective fifteen (15) days following the signature of the Commission's Executive Director.

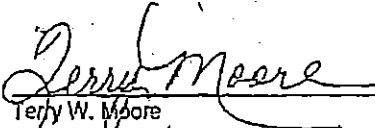
LICENSEES


St. Louis Property Investments, Inc.
Edward Joseph Ewertowski, Designated Broker


Edward Joseph Ewertowski

Date 4/10/17

COMMISSION


Terry W. Moore
Executive Director
Missouri Real Estate Commission

Date APRIL 18, 2017